

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TETRA IMAGES, LLC,

Plaintiff,

-against-

GRAHALL PARTNERS, LLC, et al.,

Defendants.

ORDER

19-CV-05250 (PMH)

PHILIP M. HALPERN, United States District Judge:

Upon review of the documents Plaintiff submitted in support of the pending Order to Show Cause for a default judgment, the Court requires supplementation thereof.

First, the Declaration of Valerie Saunders (“Saunders Declaration”) states the following:

The Fair Market Value of the Work, had GCP requested a license to reproduce and display the copyrighted Work on its website, is \$2,500.00 per photograph for a rights managed license. [Plaintiff] would charge a comparable amount to a similarly sized company for the exclusive commercial use online for a one-year period. Attached as **Exhibit 4** is a copy of previous exclusive use licensing agreements [Plaintiff] has entered into with other companies fro [sic] similar images.

(Doc. 29 ¶ 15 (bold in original)). The documentation annexed as Exhibit 4—two pages—is incomplete and does not support the contention that the Work would be licensed at an annual rate of \$2,500. (Doc. 29-4). The first page appears to be a screenshot of an e-mail that does not specify a price for the image contained therein; the second page appears to be the first page of a licensing agreement for an unspecified image for \$4,000 per year. (*Id.*). Both documents are hearsay.

Second, the Declaration of Joseph A. Dunne (“Dunne Declaration”) does not indicate whether and how individuals who worked on the case kept contemporaneous time records reflecting the hours expended for the services rendered as reflected in Doc. 30-1. (Doc. 30).

Plaintiff is directed to: **(1)** amend the Saunders Declaration and append to it—in admissible, non-hearsay form—documentary evidence supporting the contention that the Work’s Fair Market Value is, and would have been offered on Plaintiff’s website for, \$2,500, as well as evidence, if any, supporting a scarcity factor of five times the value of the Work; and **(2)** amend the Dunne Declaration to indicate whether and how individuals who worked on the case kept contemporaneous time records reflecting the hours expended for the services rendered, so as to comply with Federal Rule of Evidence 803(6)(B). Plaintiff shall file and serve the Amended Saunders Declaration and the Amended Dunne Declaration by 5:00 p.m. on April 16, 2021.

Plaintiff is directed further to serve a copy of this Order on Plaintiff by 5:00 p.m. April 1, 2021 and file proof of service on the docket on April 2, 2021.

SO ORDERED:

Dated: White Plains, New York
March 30, 2021



PHILIP M. HALPERN
United States District Judge